
Introduced by Senator BurtonFebruary 20, 2003

An act to amend Section 945.5 of the Civil Code, relating to construction defects.

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as introduced, Burton. Construction defects: affirmative defenses.

Existing law regulates actions seeking recovery on construction defects, as specified, on original construction intended to be sold as an individual dwelling unit. Existing law provides that a builder, under the principles of comparative fault, may be excused from any obligation, damage, loss, or liability if the builder can demonstrate specified affirmative defenses in response to a claimed violation.

This bill would extend the provisions relating to comparative fault, described above, to a subcontractor, material supplier, individual product manufacturer, or design professional.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 945.5 of the Civil Code is amended to
2 read:
3 945.5. A builder, *subcontractor, material supplier, individual*
4 *product manufacturer, or design professional*, under the principles
5 of comparative fault pertaining to affirmative defenses, may be
6 excused, in whole or in part, from any obligation, damage, loss, or



1 liability if the ~~builder~~ *party* can demonstrate any of the following
2 affirmative defenses in response to a claimed violation:

3 (a) To the extent it is caused by an unforeseen act of nature
4 which caused the structure not to meet the standard. For purposes
5 of this section an “unforeseen act of nature” means a weather
6 condition, earthquake, or manmade event such as war, terrorism,
7 or vandalism, in excess of the design criteria expressed by the
8 applicable building codes, regulations, and ordinances in effect at
9 the time of original construction.

10 (b) To the extent it is caused by a homeowner’s unreasonable
11 failure to minimize or prevent those damages in a timely manner,
12 including the failure of the homeowner to allow reasonable and
13 timely access for inspections and repairs under this title. This
14 includes the failure to give timely notice to the ~~builder~~ *applicable*
15 *party* after discovery of a violation, but does not include damages
16 due to the untimely or inadequate response of a builder to the
17 homeowner’s claim.

18 (c) To the extent it is caused by the homeowner or his or her
19 agent, employee, subcontractor, independent contractor, or
20 consultant by virtue of their failure to follow the ~~builder’s or~~
21 ~~manufacturer’s~~ *recommendations of the builder, manufacturer, or*
22 *any other applicable party, or to follow* commonly accepted
23 homeowner maintenance obligations. In order to rely upon this
24 defense as it relates to a builder’s recommended maintenance
25 schedule, the builder shall show that the homeowner had written
26 notice of these schedules and recommendations and that the
27 recommendations and schedules were reasonable at the time they
28 were issued.

29 (d) To the extent it is caused by the homeowner or his or her
30 agent’s or an independent third party’s alterations, ordinary wear
31 and tear, misuse, abuse, or neglect, or by the structure’s use for
32 something other than its intended purpose.

33 (e) To the extent that the time period for filing actions bars the
34 claimed violation.

35 (f) As to a particular violation for which the ~~builder~~ *applicable*
36 *party* has obtained a valid release.

37 (g) To the extent that the ~~builder’s~~ repair was successful in
38 correcting the particular violation of the applicable standard.



1 (h) As to any causes of action to which this statute does not
2 apply, all applicable affirmative defenses are preserved.

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